IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8742 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AHMEDABAD MUNICIPAL CORPORATION

Versus

CHAUHAN NAYANKUMAR NALINKANT

Appearance:

1. Special Civil Application No. 8742 of 1992

MR MR ANAND for Petitioner No. 1

MR RV DESAI for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 23/01/2004

ORAL JUDGEMENT

Heard learned advocate Mr.D.C.Rawal appearing on behalf of the petitioner Corporation and learned advocate Mr.R.V.Desai for respondent.

The petitioner Corporation has challenged the award passed by the labour Court, Ahmedabad in Reference No.1497 / 1987 dated 17th September, 1992. The labour court, Ahmedabad has set aside the termination order and granted benefits of reinstatement with continuity of service with full backwages of the interim period. Learned advocate Mr.Rawal has submitted that the petitioner Corporation had advertised the post of Blacksmith and Helper on 23rd September, 1986 in daily newspaper. In response to the said advertisement, the respondent workman had applied for the post of Helper [daily rated]. The Corporation has conducted interview of the respondent workman and thereafter, selected the respondent workman and appointment order was also issued in favour of the respondent workman in the scale of Rs.196-232/- and accordingly, the workman had reported for work on 15th April, 1987. Thereafter, the original certificates came to be verified by the Corporation for the purpose of preparing and recording the service book and on that occasion, the mistake came to notice of the petitioner Corporation that maximum age of 30 years has been crossed by the respondent workman and therefore, according to the advertisement, the respondent workman is not eligible for the post of Helper as advertised by the Corporation. Ultimately, the appointment order has been cancelled by the Corporation with an alternative offer made by the petitioner corporation to the workman immediately on 29th June, 1987 by letter in the same scale in the post of Labourer. Thus, the petitioner Corporation was prepared to appoint the workman in the post of labourer. But the said offer has been refused by the workman and the workman had challenged the said cancellation of the appointment order before the labour court. Before the labour court, statement of claim was filed by the workman and written statement was also filed by the Corporation. Thereafter, the workman was examined vide Exh.7 and on behalf of the Corporation, labour officer was examined at Exh.17 and thus, both the parties have produced certain documents. Ultimately, the labour court has come to the conclusion that once offer has been made by the Corporation and given appointment to the workman, in that case, the corporation is not allowed to cancel the said appointment of the respondent workman as the principle of estoppel come in way. The labour court has come to the conclusion that offer which was made to the workman was not proper and reasonable and that offer ultimately adversely affects the rights of the workman for promotion in future and therefore, the workman has rightly refused the said offer. Therefore, the labour court has ultimately come to the conclusion that order of

cancellation of appointment order of the respondent workman is illegal and as a result thereof, set aside the same and granted full backwages of the interim period.

Learned advocate Mr.D.C.Rawal submitted that it was bonafide mistake on the part of the Corporation occurred at the time of scrutinising the application form submitted by the workman. That after appointment of the workman, his service book was required to be prepared by the Department and on that occasion, original certificates were examined and ultimately, it was found that the respondent workman has crossed the age of 30 years and that is contrary to the advertisement and therefore, his appointment has been cancelled with an alternative offer in the same scale in the post of labourer but that offer has been refused. Therefore, the labour court has committed gross error in setting aside the order of cancellation of appointment made by the Corporation. He also submitted that once any administrative mistake has been committed by the Department, then, they have right to rectify the said mistake and same has been rectified within three days by the petitioner Corporation. It is also contended that there was no delay at all in correcting the mistake and upon merely getting an order of appointment in favour of the respondent workman, the workman is not entitled to remain in continue service if is appointment is contrary to the advertisement. On the contrary, it is the duty of the public authority to rectify the mistake and the authority can cancel the order given for an employment to any workman if the same is contrary to the advertisement and such order must have to be cancelled by the Corporation. Accordingly, the Corporation has rightly canceled the appointment order. He also submitted that the labour court has not appreciatd the oral evidence of the labour officer and come to the conclusion that the said labour officer has given deposition contrary to the record. He also submitted that once offer has been made by the Corporation immediately in the same scale to the post of labourer, then the labour court should not have awarded any backwages of the interim period.

Learned advocate Mr.D.C.Rawal for the petitioner has also pointed out that respondent workman has been appointed in Ahmedabad Municipal Transport Service [AMTS for short] in the workshop in the post of daily rated helper in the scale of Rs.750-940/- and now he become permanent employee / helper in the transport service corporation and thereafter, he also came to be promotion on the post of Fitter. Therefore, after cancellation of the appointment order by the Corporation, immediately an

offer was made and thereafter the workman was appointed by the Transport Service in the post of Helper on 1st January, 1989. However, this fact was not disclosed by the workman before the labour court and the labour court has granted full backwages of the interim period. Therefore, according to the submissions made by Mr.Rawal, the workman has not given correct facts before the labour court at the time of recording of his evidence.

Learned advocate Mr.R.V.Desai for the respondent workman has submitted that it was mistake on the part of the petitioner Corporation. The petitioner Corporation has not scrutinized the relevant record as per the advertisement at the time when application form filled up by the workman and accepted by the Corporation. Therefore, once the mistake has been committed by the public body, the same cannot be corrected by the authority as the same is not permitted and even principle of promissory estoppel would also come in the way. Therefore, according to him, the labour court has rightly appreciated the documentary and oral evidence and rightly passed the award granting full backwages in favour of the respondent workman. He also submitted that the workman has written a letter to the Municipal Commissioner dated 31st March, 1994 that he is now not interested in job as he has already been appointed by the AMTS in its workshop as permanent helper. Therefore, he is now only interested in backwages. He also made an offer that if the Corporation is prepared to pay him some part of the backwages, or any compensation, he is willing and prepared to settle the matter.

I have considered submissions made by the learned advocates appearing on behalf of the respective parties. The facts are not in dispute. It is not case of the workman that in advertisement for the post of Helper, maximum age limit was not 30 years or was not the condition. Therefore, according to the advertisement published by the Corporation for the post of Helper, the age limit was prescribed as 18 to 30 years. This fact was not disputed by the workman before the labour court. It is also not disputed that at the time when the application form was filled up, the workman has already crossed the age limit of 30 years. The difficulty arose at the time of verification and scrutiny of the application form, the Corporation has not taken care and called the respondent workman in interview and selected for the post of Helper. Therefore, that mistake has come to the notice of the petitioner corporation at the time of scrutiny and verification of the original certificates while preparing and recording the service book for the

respondent workman just after couple of days and as a result thereof, the appointment order has been cancelled by the Corporation. In above background of the facts and circumstances of the case, according to my opinion, the Corporation has rightly cancelled the appointment order as it was bonafide mistake on the part of the corporation. Bonafide mistake cannot create and confer any right in favour of the workman and the such bonafide mistake can be rectified by the authority and merely mistake cannot become a legal right in favour of the other side. It is also necessary to note one important aspect that immediately on realising the mistake, mistake was corrected and simultaneously, reasonable offer was made by the Corporation by letter dated 24th June, 1987 to the workman offering him an appointment in the post of Labourer in the same scale but the said offer was refused by the workman. Therefore, considering this fact, the view taken by the labour court that once mistake has been committed, must have to be permitted to be continued as if the Corporation has no legal right to rectify such mistake in accordance with law. Such view of the labour court is perverse and contrary to the settled principle of law laid down by the Apex Court.

The Apex Court in case of MITRANGSHU ROY CHOUDHARY AND OTHERS V. UNION OF INDIA AND OTHER reported in [1999] 3 SCC 649 has taken a view that the appointment made without knowledge of and contrary to the policy decision taken at the Headquarters, the person had no right to appointment and therefore, cancellation of such appointment held to be not unconstitutional. In the facts of the aforesaid case, the Apex Court has dealt with identical facts wherein appointment has been given to the one apprentice which is contrary to the policy and same has been cancelled and thereafter, appointment has been given in the Group-D category, for which, employee was entitled. The relevant observations made by the Apex Court are referred as under :

"The appellants were selected by the Railways as Trade Apprentices under the Apprentices Act, 1961. On successful completion of training, they were appointed as Fitter Grade III vide appointment letters dated 28.5.1990. However, by another letter dated 7.6.1990, their appointments were canceled and they were offered Group D posts of Carriage Khalasi. The appellants challenged the action of the Railways as violative of Articles 14 and 16. The Railways however explained that on 27.11.1989 i.e. prior to issue of appointment letters to the appellants, railway

headquarters had taken a policy decision after discussions with the Unions that course completed apprentices would be appointed against Group D posts while departmental promotees would be appointed against Group C posts. The appellants were appointed against Group C posts without the knowledge of this decision. Their appointment was cancelled when the policy decision came to the knowledge of the competent authority but still the appellants, instead of being left high and dry, were offered Group D posts.

The Supreme Court while disposing of the appeal, took note of the fact that under Section 22[1] of the Apprentices Act, 1961, it was not obligatory on the Railway to offer any appointment to the appellants and that the appointment letter dated 28.5.1990 contained a clause under which appellants' services could be terminated by 11 days' notice or pay in lieu thereof.

Held : There is no dispute at the Bar that there was no guarantee or promise for employment while sending the present appellants to undergo apprenticeship course. The appellants therefore do not have a right to be appointed in view of the specific legal provisions in Section 22 of the Act. Though there is a provision in relevant rules for making recruitment to the extent of 25 % from course completed apprentices, yet the appellants or other similarly situated persons do not have a right to be appointed."

Recently also, the Apex Court in case of HIGH COURT OF JUDICATURE FOR RAJASTHAN V. P.P.SINGH AND ANOTHER reported in 2003 SCC [L & S] 424, has observed in any view of the matter, even in a case where the initial action is illegal,the same can be ratified by a body competent thereof. The relevant observations in para-42 of aforesaid decision are reproduced as under :

"42. In any view of the matter, even in a case where the initial action is illegal,the same can be ratified by a body competent thereof. This aspect of the matter has not been considered by the High Court at all. In Parmeshwari Prasad Gupta v. Union of India, this Court held : [SCC pp.546-47, para 14]

"Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on 16.12.1953 to terminate his services, it would no follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purposed to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorised, was done on behalf of the company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on 17.12.1953" [See also Marathwada University v. Seshrao Balwant Rao Chavan [SCC para 28], Babu Verghese v. Bar Council of Kerala [SCC para 35] and Barnard v. National Dock Labour Board]."

In view of observations above made by the Apex Court, according to my opinion, the Corporation has rightly cancelled the appointment order issued in favour of the respondent workman. Therefore, the view taken by the labour court is contrary to the settled principles of law.

So far the question of backwages is concerned, the observations made by the labour court that offer made by the Corporation has been refused by the respondent workman is right, that itself is perverse finding inasmuch as when immediate offer was made, for which, the respondent workman was entitled as per the advertisement and offer was made in the similar scale which was admittedly refused by the workman. Therefore, considering the fact that offer was made on 24th June, 1987 and termination of workman in April, 1987, coupled with the fact that the workman concerned has been appointed in AMTS workman as permanent Helper with effec from 1st January, 1989 and remained continued and also got promotion in the post of Fitter and thus, it can be presumed and believed that the workman remained in gainful employment and hence, grant of backwages in favour of the respondent workman is also illegal and required to be quashed and set aside.

Therefore, considering the entire facts and circumstances of the case, the award passed by the labour court in question is required to be quashed and set aside.

In the result, present petition is allowed. The award impugned in the present petition passed by the labour court, Ahmedabad in Reference No.1497 / 1987 dated 17th September, 1992 is hereby quashed and set aside.

Rule is made absolute with no order as to costs.

Date : 23.1.2004 [H.K.Rathod, J.]

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